

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

**SHEILA WHITMORE, and
ANTHONY WHITMORE,**

Plaintiff,

Vs.

**Civ. Action. No.2:15-cv-2077
JURY TRIAL DEMANDED**

GREENTREE SERVICING,

Defendants.

**PLAINTIFFS' RESPONSE TO THE DEFENDANT'S
MOTION TO DISMISS THE COMPLAINT**

COME NOW THE PLAINTIFFS, by and through undersigned counsel of record, who for Response to the Motion to Dismiss the Complaint filed in this case would state as follows:

1. The Defendant's F.R.C.P. 12(b)6 Motion to Dismiss the Complaint is based upon the assertion that the Plaintiff's entire claim is based upon the assertion that there was no valid chain of title of assignments from the original mortgage holder to Green Tree Servicing, LLC. The Defendant then attached copies of all of the assignments filed with the Register of Deeds office and filed this motion to Dismiss alleging that the allegations in the Complaint were in error.
2. The Plaintiff concedes that the statement contained in the Complaint that there were no assignments after the one to RBMG was in fact in error. However, the Plaintiff has now filed a motion to amend the Complaint, which removes this incorrect allegation. All claims related to this allegation have now been withdrawn.

3. Nonetheless the Plaintiff avers that the Motion to Dismiss should be denied. Despite this error, there 1) still is no valid chain of assignments, as the assignments attached to the Motion to Dismiss are faulty and 2) the Plaintiff has filed a Motion to Amend the Complaint which raises other claims, which are not subject to the Motion to Dismiss, including claims of equitable estoppel and declaratory judgment based upon newly discovered problems with the promissory note which has recently been produced in discovery.
4. The Plaintiffs therefore aver that the arguments contained in the Motion to Dismiss are moot, due to the filing of the Motion to Amend and the First Amended Complaint and should be denied.

WHEREFORE, THE PLAINTIFF PRAYS, that this Honorable Court grant the Motion to Amend and allow the plaintiff to file the Second Amended Complaint attached herein.

RESPECTFULLY SUBMITTED,

/s/Curtis D. Johnson, Jr. _____
CURTIS D. JOHNSON, JR.
Attorney for the Plaintiff
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CERTIFICATE OF SERVICE

I, CURTIS D. JOHNSON, JR., do hereby certify that a copy of the foregoing pleading has been mailed to Counsel for the Defendants,

Klint W. Alexander (#20420)
V. Austin Shaver (#26581)
BAKER, DONELSON, BEARMAN,

CALDWELL & BERKOWITZ, PC
Baker Donelson Center
211 Commerce Street, Suite 800
Nashville, TN 37201

on this, the _6th _ day of April, 2015.

/s/Curtis D. Johnson, Jr. _____
CURTIS D. JOHNSON, JR.